CANADA

PROVINCE DE QUÉBEC

DISTRICT OF MONTREAL

**SUPERIOR COURT**

No: 500-06-000404-075

DATE: May 18, 2023

**BY THE HONOURABLE DONALD BISSON J.S.C.**

**SARAH GAUDET**

Plaintiff

**v.**

**CANADIAN IMPERIAL BANK OF COMMERCE**

Defendant

and

**FONDS D’AIDE AUX ACTIONS COLLECTIVES**

Impleaded party

**JUDGMENT**

(On a request for leave to discontinue)

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**FOR THESE REASONS, THE COURT:**

**1. Introduction: context and position of the parties**

[1] The Court has before it an *Application by the Plaintiff Sarah Gaudet for recognition and enforcement of a foreign judgment and for leave to discontinue*, which is supported by the Defendant Canadian Imperial Bank of Commerce.

[2] The Defendant also waives its claim for legal costs.

[3] The Plaintiff seeks recognition and enforcement of the March 3, 2023, order of Mr. Justice Edward Belobaba of the Ontario Superior Court of Justice approving the national settlement reached between the parties in *Fresco v. Canadian Imperia/Bank of Commerce*, File No. 07-CV-334113CP (the “Fresco Action”) (the “Order Approving Settlement [Fresco]”).[[1]](#footnote-1) According to the parties, this agreement includes the Quebec class members, which makes the application for leave to bring a class action unnecessary, hence the application for recognition of the Ontario decision and the application for leave to discontinue.

[4] The parties submit that the Court should grant leave to discontinue this proposed class action since it is in litispendance with the Fresco Action, and this proceeding is now moot.

[5] The class action seeks reimbursement for hours worked by class members but not paid by the Defendant.

[6] The evidence submitted consists of a sworn statement dated April 12, 2023, by Me Marie-Claude St-Amant, one of the Plaintiff’s lawyers, with Exhibits P-1 to P-13,[[2]](#footnote-2) and a sworn statement dated February 23, 2023, by Ms. Dara Fresco with Exhibit A. There is also the Plaintiff’s email of December 22, 2022, to Me Marie-Claude St-Amant, unlisted, which reads as follows:

Hello,

Please accept this email as my signature and my confirmation to mandate Me Marie-Claude St-Amant to sign the agreement for recognition of this class action by the Superior Court of Quebec. Me St-Amant is mandated to take all necessary actions to ensure that the class action instituted in Quebec is part of the Canada-wide agreement reached by the Ontario court.

[7] The Fonds d’aide aux actions collectives (the “FAAC”) opposes the *Application by the plaintiff Sarah Gaudet for recognition and enforcement of a foreign judgment and for leave to discontinue*, on the following grounds:

Recognition of an Ontario judgment is not the appropriate procedural vehicle given section 12.3 of the domestic transaction (Exhibit P-8) and the distinct nature of the applicable Quebec law, including articles 571 et seq. of the Code of Civil Procedure (“CPC”) and the *Act respecting the Fonds d’aide aux actions collectives*,[[3]](#footnote-3) which are of public order;

The terms defined in Section 1(22) and (23) of the transaction do not refer to the Quebec FAAC but rather to the Ontario Class Proceedings Fund;

In fact, the transaction is very similar to other multi-jurisdictional transactions that have been approved separately in Quebec in the past, in the best interests of Quebec members;

It would be more appropriate to proceed by way of authorization for the settlement, with approval of the transaction and attorneys’ fees, together with a declaration of a settlement out of court, which is already provided for and permitted by Section 2 of the transaction, as well as paragraphs M and following of the preamble to the transaction;

Article 577 CPC specifically states that the Court must protect the rights and interests of Quebec members, if it is asked to decline jurisdiction because a multi-territorial class action has been filed outside Quebec;

In the alternative, the FAAC indicates that no assistance has been requested or paid by FAAC in this matter and that it understands that the settlement provides for a collective recovery, with the possibility of a balance. The FAAC requests that the portion of the remainder attributable to Quebec members be subject to a levy in accordance with the *Regulation respecting the percentage withheld by the Fonds d’aide aux actions collectives*.[[4]](#footnote-4)

[8] What to decide?

**2. Facts**

[9] Let us begin by noting that, in Ontario, the Order Approving Settlement (Fresco) is currently final and binding,[[5]](#footnote-5) as there has been no appeal and the time for appeal has now expired.

**2.1 Procedural Context**

[10] On June 18, 2007, the Plaintiff filed a Motion to institute a class action and to be granted the status of representative (the “Application for Authorization [Gaudet]”) in this case.[[6]](#footnote-6)

[11] The purpose of the Application for Authorization (Gaudet) was to allow a class action to be brought on behalf of the members of the following group (the “Proposed Quebec Class [Gaudet]”):

All persons currently and formerly employed as non-management, non-­unionized employees of CIBC who are or were tellers or other front line customer service employees (limited to persona! bankers, commercial bankers and account executives) working at CIBC retail branch offices across Quebec.

[12] On June 4, 2007, an equivalent parallel action had already been filed by Dara Fresco before the Ontario Superior Court of Justice.[[7]](#footnote-7)

[13] On October 2, 2007, the Gaudet Action was stayed by the Court pending the outcome of the Fresco Action.

[14] Over the years, the Plaintiff has kept the Court informed of the progress of the proceedings before the Ontario Court of Justice.

[15] Apart from the Defendants’ lawyers’ substitution notice of January 3, 2023, no additional procedural steps were completed as the Fresco Action progressed.

[16] On June 26, 2012, the Fresco Action was certified on behalf of a pan-Canadian class by an order of the Ontario Court of Appeal (the “Certification Order [Fresco]”).[[8]](#footnote-8) The certified national class (the “National Class [Fresco]”) is as follows:

Current and former non-management, non-unionized employees of CIBC in Canada who worked at CIBC’s retail branches, High Value Cluster offices or Imperial Service offices at any time from February 1, 1993, to June 18, 2009, as tellers or other front-line customer service employees, including the following:

1. Customer Service Representatives (also formerly known as Tellers);

2. Assistant Branch Managers (Level 4);

3. Financial Service Representatives (also formerly known as Personal Banking Associates, Personal Bankers, Senior Personal Bankers and Business Advisors);

4. Financial Service Associates;

5. Branch Ambassador;

And other employees who performed the same or similar job functions as the above under a different or previous CIBC job title.

[17] The National Class (Fresco) therefore includes the putative members of the Proposed Quebec Class (Gaudet).

[18] On December 20, 2013, Justice Edward Belobaba of the Ontario Superior Court of Justice approved a direct notice of certification to members of the National Class (Fresco) (the “Direct Notice of Certification [Fresco]”), a notice of publication of certification (the “Notice of Publication of Certification [Fresco]”) and the plan for distribution of those notices (the “Order Approving Notices of Certification [Fresco]”).[[9]](#footnote-9)

[19] As ordered in paragraph 2 of the Order Approving Notices of Certification (Fresco), the notices were translated into French. A copy of the French version of the Direct Notice of Certification (Fresco) is attached as Exhibit P-7.

[20] The Direct Notice of Certification (Fresco) has been mailed to members of the National Class (Fresco) in accordance with paragraph 3(a) of the Order Approving Notices of Certification (Fresco). For members residing in Quebec, the French version of this notice has been sent.

[21] A French version of the Notice of Publication of Certification (Fresco) was also published in the newspaper *La Presse* in accordance with paragraph 3(b) of the Order Approving Notices of Certification (Fresco).

[22] As set out in the Direct Notice of Certification (Fresco), members of the National Class (Fresco) had until May 20, 2014, to opt out. There were 1,041 exclusions, including approximately 126 members who resided in Quebec.

**2.2 The national settlement**

[23] On December 28, 2022, after months of negotiations, including a mediation process, the parties in the Fresco Action reached a national settlement agreement (the “National Settlement Agreement”). A copy of the National Settlement Agreement, including its appendices and the distribution protocol found in Appendix E (the “Distribution Protocol”), is Exhibit P-8. A copy of the French translation of the National Settlement Agreement has been made.[[10]](#footnote-10)

[24] The Plaintiff, through her lawyers, signed the National Settlement Agreement reached in the Fresco Action.

[25] The National Settlement Agreement provides for the payment of a total of $153 million to the members of the following national class (the “Fresco National Settlement Class”):[[11]](#footnote-11)

Current and former non-management, non-unionized employees of CIBC in Canada who worked at CIBC’s retail branches, High Value Cluster offices or Imperial Service offices at any time from February 1, 1993, to June 18, 2009, as tellers or other front-line customer service employees, including the following:

(a) Customer Service Representatives (also formerly known as Tellers);

(b) Assistant Branch Managers (Level 4);

(c) Financial Service Representatives (also formerly known as Personal Banking Associates, Personal Bankers, Senior Personal Bankers and Business Advisors);

(d) Financial Service Associates;

(e) Branch Ambassadors; and

f) And other employees who performed the same or similar job functions as the above under a different or previous CIBC job title.

g) But excludes any person who has chosen to exclude themselves from the Fresco Action.

[26] This definition is consistent with that of the Fresco National Class, while excluding the 1,041 members who opted out during the 2013–2014 opt-out period.

[27] The National Settlement Agreement provides that the Defendant will provide the Administrator with information concerning the members of the National Settlement Class (Fresco) for the purposes of sending notices and managing claims.

**2.3 Approval process and notices to members in Quebec**

[28] On January 9, 2023, Justice Belobaba of the Ontario Superior Court of Justice approved the Direct Notice of Approval Hearing (the “Notice of Settlement Approval Hearing [Fresco—Direct Notice]”), the Publication Notice of Approval Hearing (the “Notice of Settlement Approval Hearing [Fresco—Publication]”), the digital banner of the Notice of Approval Hearing (collectively with the other two notices, the “Notice of Settlement Approval Hearing [Fresco]”) and the distribution plan for these notices (“Order Approving Notice of Settlement Approval Hearing [Fresco]”). A copy of the Order Approving Notice of Settlement Approval Hearing (Fresco), which contains, among other things, the notice distribution plan approved in Appendix E (the “Distribution Plan for the Notices of Settlement Approval”), is Exhibit P-10.

[29] Third party professional firm Ricepoint Administration, Inc. (the “Administrator”) has been appointed as the administrator responsible for disseminating the Notice of Settlement Approval Hearing (Fresco—Direct Notice).[[12]](#footnote-12)

[30] As appears from the Notice of Settlement Approval Hearing (Fresco—Direct Notice) and the Notice of Settlement Approval Hearing (Fresco—Publication), which are attached as Appendices B and C, respectively, to the Order Approving Notice of Settlement Approval Hearing (Fresco) (Exhibit P-9), Justice Belobaba set the settlement approval hearing in the Fresco Action for March 3, 2023, at 11:30 a.m.

[31] In accordance with paragraph 1 of the Distribution Plan for the Notices of Settlement Approval (Fresco), members of the National Class (Fresco) who did not opt out of the Fresco Action and who resided in Quebec received a bilingual version of the Notice of Settlement Approval Hearing (Fresco—Direct Notice) by email or regular mail.[[13]](#footnote-13)

[32] In accordance with paragraph 2 of the Plan for the Distribution Plan for the Notices of Settlement Approval (Fresco), a French-language version of the Notice of Hearing for Approval of the Regulations (Fresco—Publication) was also published in the newspaper *La Presse.*[[14]](#footnote-14)

[33] In addition, it should be noted that important documents relating to the settlement in the Fresco Action and the settlement approval process, including the National Settlement Agreement, the Distribution Protocol, the Notice of Settlement Approval Hearing (Fresco— Direct Notice) and the Notice of Settlement Approval Hearing (Fresco— Publication), were available on a bilingual website for the Fresco Action, the Notice of Settlement Approval Hearing (Fresco— Direct Notice) and the Notice of Settlement Approval Hearing (Fresco— Publication), were available on a bilingual website relating to the Fresco Action (the “Fresco Website”) prior to the March 3, 2023, Approval Hearing at the following addresses:

In English: https://cibcunpaidovertime.ca

In French: https://cibcunpaidovertime.ca/fr/.

[34] As of the date hereof, the Fresco Website is still active.

[35] As mentioned in the Notice of Settlement Approval Hearing (Fresco—Direct Notice), members of the National Class (Fresco) who did not opt out of the Fresco Action could, if they wished, express their views on the settlement in support of or in opposition to it by transmitting their representations in writing (by mail or email) to class counsel in the Fresco Action no later than February 20, 2023.

[36] One hundred and forty-eight (148) members made representations in favour of the settlement, and no member objected, as set out in paragraph 122 of the affidavit dated February 23, 2023, of Jody Brown, one of the class counsel in the Fresco matter (the “Brown Affidavit”).[[15]](#footnote-15)

[37] On February 27, 2023, class counsel in the Fresco Action posted an update in French and English on the Fresco Website advising members of the National Class (Fresco) that the approval hearing on March 2, 2023, at 11:00 a.m. would be held by Zoom at the coordinates set out in that update.

[38] On March 3, 2023, the settlement approval hearing was held by Zoom. On the same day, Justice Belobaba approved the National Settlement Agreement, including the Distribution Protocol, and issued the Order Approving Settlement (Fresco) (Exhibit P-1).[[16]](#footnote-16)

[39] The time limits for appeals in Ontario have now expired, and the Order Approving Settlement (Fresco) is final and binding.

**3. Analysis and discussion**

[40] Let’s start with the FAAC’s interest in raising its position.

**3.1 FAAC’s Interest**

[41] In *Union des consommateurs* v. *Telus Communications inc.*[[17]](#footnote-17)the Court described the interest that the FAAC may have in transactions and similar proceedings as follows:

[26] It should be noted, however, that the Fund has no interest in making representations on all aspects of a transaction, as the Superior Court recently decided in *Zouzout v.* *Canada Dry Mott’s Inc.* and as the Court of Appeal and the Superior Court ruled in earlier years. The Fund’s legal interest is in fact limited to: 1) reimbursement of the financial assistance granted; 2) court costs and the fees of the lawyers involved in the application; 3) the balance remaining from the collective recovery and the application of the *Regulation respecting the percentage withheld by the Fonds d’aide aux actions collectives*; and 4) any other matter relating to compliance with the *Act respecting the Fonds d’aide aux actions collectives*.

[27] However, regardless of the source of a potential problem with a proposed transaction, even if the Fonds is the source, the court must inquire and possibly intervene ex officio when it learns of the problem, without turning a deaf ear.

[42] The Court finds that the FAAC has an interest here in making the representations it has made because the latter directly concerns the question of the balance remaining in the collective recovery, the application of the *Regulation respecting the percentage withheld by the Fonds d’aide aux actions collectives* and compliance with the *Act respecting the Fonds d’aide aux actions collectives*.

[43] The Court moves on to the application for recognition of the Order Approving Settlement (Fresco).

**3.2 Application for recognition of the Order Approving Settlement (Fresco)**

[44] This application is made under [article 3155](https://www.canlii.org/fr/qc/legis/lois/rlrq-c-ccq-1991/derniere/rlrq-c-ccq-1991.html#art3155_smooth) of the [*Civil Code*](https://www.canlii.org/fr/qc/legis/lois/rlrq-c-ccq-1991/derniere/rlrq-c-ccq-1991.html) of Quebec (“[CcQ](https://www.canlii.org/fr/qc/legis/lois/rlrq-c-ccq-1991/derniere/rlrq-c-ccq-1991.html)”) and articles 507 and 594 CPC.

[45] The Court is of the opinion that these provisions are respected here by the Plaintiff’s request and that the FAAC’s challenge cannot be upheld, for the following reasons.

[46] The Ontario Superior Court of Justice was the first to hear the proposed class action in June 2007, which was certified in 2012. The Gaudet Action, which was never certified, was stayed in October 2007, more than fifteen years ago. The Court concludes that there is *lis pendens* between the Gaudet Action, which was never authorized, and the Fresco Action, which was certified in 2012.

[47] The Ontario Superior Court of Justice therefore had jurisdiction to issue the Order Approving Settlement (Fresco).

[48] Moreover, the Order Approving Settlement (Fresco) is not contrary to public order. It was made in accordance with the essential principles of procedure and with requirements similar to those imposed in class actions filed in Quebec with respect to the manner in which members’ rights are to be exercised. Thus, if article 577 CPC applies, it is respected because the protection of the rights and interests of Quebec residents is perfectly assured by the National Settlement Agreement and everything that surrounded it. Here’s why.

**3.2.1 Notices to Quebec members of the National Class (Fresco) are sufficient**

[49] According to the Court, the various notices to the members of the National Class (Fresco), whether regarding certification or approval of the settlement, are sufficient. They were distributed and communicated in French and English in Quebec, as appears from the notices described above (Exhibits P-7, P-11, and P-12).

[50] These notices were disseminated in accordance with elaborate communication plans approved by the Ontario Superior Court of Justice to ensure broad distribution of the notices directly by mail or email, through newspapers and via the Internet, as described above.

[51] Notices of approval of the regulations have been translated[[18]](#footnote-18) and the French versions may be used by the Administrator for distribution in Quebec.

**3.2.2 The manner in which the rights of the Quebec members of the National Class (Fresco) are to be exercised is in accordance with applicable law**

[52] The National Settlement Agreement, including the Distribution Protocol, has been translated into French and is available online in French and English on the Fresco Website.

[53] The Distribution Protocol specifically provides that the Administrator must, among other things, set up a bilingual administration website[[19]](#footnote-19) and assign sufficient staff to respond to members in English or French.[[20]](#footnote-20)

[54] In order to receive compensation under the National Settlement Agreement (Fresco), a member must satisfy the following conditions: (1) be a member of the National Settlement Class (Fresco) and (2) complete the settlement payment form and submit it within the required timeframe (the “Eligible Members”).

[55] Members will not be required to provide supporting documentation unless requested by the Administrator.

[56] The National Settlement Agreement provides that the portion of the compensation paid to Eligible Members will take into account the length of employment during the period covered by the Fresco Action in one of the positions concerned, the position(s) held and the number of claims filed.

[57] The Administrator will be responsible for managing claims, including confirming information in members’ files, correcting deficiencies and calculating members’ respective shares.

[58] According to the Court, the National Settlement Agreement approved by the Ontario Superior Court of Justice provides for a simple and efficient claims process that will promote greater compensation among members, including Quebec members.

[59] The Court concludes by stating that it is hard to see how anything better could have been done to protect Quebec members, both in terms of language and the distribution of notices. The Court notes that the notices were sent directly by email to the members, whose identity was known to the Defendant.

**3.2.3 Public order and compliance with the *Act respecting the Fonds d’aide aux actions collectives* and the *Regulation respecting the percentage withheld by the Fonds d’aide aux actions collectives***

[60] Finally, the Court is of the opinion that the National Settlement Agreement and all that surrounds it do not derogate from the *Act respecting the Fonds d’aide aux actions collectives* or the *Regulation respecting the percentage withheld by the Fonds d’aide aux actions collectives*.

[61] According to the Court:

1) Although Section 12.3 “Governing Law” states that the National Settlement Agreement shall be governed by, construed and enforced in accordance with the laws of the Province of Ontario, this does not affect Sections 3.1(6), 5(1)(g) and 10.4(2) of the Settlement Agreement;

2) Even if the terms defined in Section 1(22) and (23) of the transaction do not refer to the Quebec FAAC but rather to the Ontario Class Proceedings Fund, this does not change anything considering Sections 3.1(6), 5(1)(g) and 10.4(2) of the transaction;

3) The transaction provides for collective recovery. However, Sections 3.1(6), 5(1)(g) and 10.4(2) specifically provide for a payment to the FAAC in the event of a residual, on the portion relating to Quebec members who have made a claim. There is also a specific reference to the application of the *Regulation respecting the percentage withheld by the Fonds d’aide aux actions collectives:*[[21]](#footnote-21)

3.1 (6) The Administrator shall pay the *Fonds d’aide aux actions collectives* (Class Action Assistance Fund) the amount owed pursuant to the *Regulation respecting the percentage withheld by the Fonds d’aide aux actions collectives* in respect of remittances to the *Fonds d’aide aux actions collectives*, and in case of any remaining balance to be allocated cy près (meaning pursuant to article 596, paragraph 3, of the Quebec Code of Civil Procedure) to one or more recipients to be approved by the Ontario Court (or to be approved by the Quebec Court if settlement approval is required in Quebec), the *Act Respecting the Fonds d’aide aux actions collectives*, CQLR c F-3.2.0.1.1 will apply to the portion of any remaining balance, if any, attributable to Class Members who are residents of Quebec.

5 (1) On or after the Effective Date, the Administrator shall distribute the Settlement Amount in accordance with the following priorities:

[…]

(g) to pay any amounts to which the *Fonds d’aide aux actions collectives* in Quebec may be entitled.

10.4 (2) If the Escrow Account is in a positive balance (whether by reason of tax refunds, un-cashed cheques or otherwise) after one hundred eighty (180) days from the date of distribution of the Net Settlement Amount, any balance sufficient, in the opinion of Class Counsel and the Administrator acting reasonably, to warrant further distribution shall be allocated among Class Members, in accordance with the Distribution Protocol or such other distribution method as approved by the Court. In the event that the balance remaining in the Escrow Account is not sufficient to warrant a further distribution, the balance shall be distributed cy près (and consistently with article 596 CCP, paragraph 3, of the Quebec Code of Civil Procedure) to a recipient or recipients approved by the Courts and to pay any further Class Proceedings Fund Levy and any further amounts to which the *Fonds d’aide aux actions collectives* in Quebec may be entitled.

4) Annex E of the transaction, which is the distribution protocol, also specifically provides as follows:[[22]](#footnote-22)

5(20) (g) Step 7: Remittance

The Administrator will make the Remittances to the Canada Revenue Agency and any other applicable government entities, including Revenu Québec and provide T4A and related forms to Class Members, including RL-1 forms to Quebec Class Members. The Administrator will remit the CPF Levy to the CPF and, if required, any amounts owing to the Fonds d’aide aux actions collectives in Quebec.

[62] The Court is of the opinion that the transaction provides for the payment to the FAAC of any balance owing on the Quebec members’ portion of the claims, even though the Superior Court did not specifically approve the transaction in Quebec. However, for greater certainty, the Court will issue a finding to that effect. This finding is directed at the Administrator, who is not a party to these proceedings, but the Court will order the parties to ensure that it is applied.

**3.2.4 Conclusion**

[63] The Court concludes that the application for recognition and enforcement of a foreign decision must be allowed since the criteria of [articles 3155](https://www.canlii.org/fr/qc/legis/lois/rlrq-c-ccq-1991/derniere/rlrq-c-ccq-1991.html#art3155_smooth) [CcQ](https://www.canlii.org/fr/qc/legis/lois/rlrq-c-ccq-1991/derniere/rlrq-c-ccq-1991.html) and 595 CPC are met and the [*Act respecting the Fonds d’aide aux actions collectives*](https://www.canlii.org/fr/qc/legis/lois/rlrq-c-f-3.2.0.1.1/derniere/rlrq-c-f-3.2.0.1.1.html) and the *Regulation respecting the percentage withheld by the Fonds d’aide aux actions collectives* are complied with for the Quebec portion.

[64] In accordance with the parties’ submissions, the Court will not award any legal costs.

[65] Let’s move on to the question of the leave to discontinue.

**3.3 The leave to discontinue**

[66] This application is made under article 585 CPC.

[67] The Court begins with the applicable law. The Court refers as if at length to paragraphs 21 and 24 of *Deschênes v. Johnson & Johnson*. In summary:[[23]](#footnote-23)

Under article 585 of the *Code of Civil Procedure*, a discontinuance that occurs before authorization must be authorized by the Court, given the latter’s obligation to look after the interests of potential members;

Before authorizing the discontinuance:

1) The Court must inquire into the real reasons behind the request in order to: a) ensure that the discontinuance does not cause prejudice to putative class members; and b) ensure that it does not undermine the integrity of the justice system. Beyond this analysis, the judge does not have to decide whether the discontinuance is appropriate, and thus does not have to assess the sufficiency of the reasons for the discontinuance;

2) The Court must also decide whether publication of a notice informing the members of the discontinuance is required.

[68] What about here?

[69] The Court is of the opinion that it must grant leave to discontinue the Application for Authorization (Gaudet).

[70] The situation here is similar to that in *Bourgeois* v. *Electronics Arts inc.*[[24]](#footnote-24)in which a discontinuance was allowed.

[71] According to the Court:

1) The National Settlement Agreement was reached after a rigorous process designed to ensure that the settlement was fair and reasonable;

2) The National Settlement Agreement was approved by the Ontario Superior Court of Justice, which found that the settlement is fair, reasonable and in the best interests of the members of the National Class (Fresco), including the Quebec members;

3) The Plaintiff was informed of the contents of the National Settlement Agreement (Fresco), signed this agreement through her lawyers, and supported its approval by the Ontario Superior Court of Justice;

4) The Order Approving Settlement (Fresco) protects the rights and interests of Quebec residents and renders the Gaudet Application for Authorization moot;

5) The rights of the putative members of the proposed Gaudet Class, namely the Quebec members of the National Class (Fresco), are preserved, and they will be able to submit claims under the National Settlement Agreement (Fresco) approved by the Ontario Superior Court of Justice on the same basis as members residing outside Quebec;

6) The discontinuance sought is intended to facilitate the resolution of the dispute as a whole and in no way affects the rights of the Quebec members;

7) This will save judicial resources and reduce the costs incurred;

8) The Defendant consents to the request for discontinuance.

[72] In these circumstances, the Court is of the opinion that the discontinuance does not cause prejudice to the putative members of the proposed class and does not undermine the integrity of the justice system.

[73] The Court is also of the view that it is not necessary to publish a notice of discontinuance, since the Quebec members have already received several notices in both languages.

[74] The Court therefore grants the Plaintiff’s request. The Court understands that the Plaintiff will file a discontinuance subsequent to this judgment.

[75] In accordance with the parties’ submissions, the Court will not award any legal costs.

**FOR THESE REASONS, THE COURT:**

[76] **GRANTS** the *Plaintiff’s Application for recognition and enforcement of a foreign decision and for leave to discontinue*;

[77] **RECOGNIZES** and **DECLARES BINDING** in Quebec the order made on March 3, 2023, by the Honourable Edward Belobaba of the Ontario Superior Court of Justice in the class action *Fresco* v. *Canadian Imperial Bank of Commerce* bearing file number 07-CV-334113CP approving the National Settlement for the benefit of a national class, including residents of Quebec;

[78**] AUTHORIZES** the Plaintiff to withdraw, without costs, her *Motion to institute a class action and to be granted the status of representative* in this file, without notice or further formality;

[79**] ORDERS** the Administrator, Ricepoint Administration, Inc. pursuant to the Distribution Protocol, to pay into the *Fonds d’aide aux actions collectives* an amount equal to the deduction from the portion of the balance attributable to Quebec members in accordance with the [*Regulation respecting the percentage withheld by the Fonds d’aide aux actions collectives*, R.R.Q., c. F-3.2.0.1.1, r. 2](https://www.canlii.org/fr/qc/legis/regl/rlrq-c-f-3.2.0.1.1-r2/derniere/rlrq-c-f-3.2.0.1.1-r2.html);

[80] **ORDERS** the Plaintiff, the Defendant and their counsel to ensure that the Administrator implements the foregoing conclusion;

[81] **ALL** without legal fees.

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|   | DONALD BISSON, J.S.C. |
|   Me Marie-Claude St-AmantMMGCCounsel for the plaintiff  Me William McNamara, Me Marie-Ève Gingras and Me Christopher MaughanSociété d’Avocats Torys S.E.N.C.R.L.Counsel for the defendant  Me Nathalie GuilbertFonds d’aide aux actions collectivesCounsel for impleaded party |
|   |
|   |
| Hearing date:  | May 1, 2023 (on file) |
|  |  |  |

1. A copy of this judgment is Exhibit P-1. [↑](#footnote-ref-1)
2. Exhibit P-13 is the sworn statement of February 23, 2023, of Jody Brown, a lawyer for the plaintiffs in the Ontario file. Exhibit P-2 is the sworn declaration of Louis Sokolov, one of the plaintiffs’ lawyers in Ontario, dated April 12, 2023. [↑](#footnote-ref-2)
3. RLRQ, c. F-3.2.0.1.1. [↑](#footnote-ref-3)
4. RLRQ, c. F-3.2.0.1.1, r. 2. [↑](#footnote-ref-4)
5. As explained in paragraph 3 of the sworn declaration of April 12, 2023, of Louis Sokolov, one of the plaintiffs’ lawyers in Ontario (Exhibit P-2). [↑](#footnote-ref-5)
6. A copy of the Application for Authorization (Gaudet) is Exhibit P-3. [↑](#footnote-ref-6)
7. See the Statement of Claim in the Fresco Action, Exhibit P-4. [↑](#footnote-ref-7)
8. Exhibit P-5. [↑](#footnote-ref-8)
9. Exhibit P-6. [↑](#footnote-ref-9)
10. Exhibit P-9. [↑](#footnote-ref-10)
11. National Settlement Agreement (Exhibit P-8), Section 1(17). [↑](#footnote-ref-11)
12. Order Approving Notice of Settlement Approval Hearing (Fresco) (Exhibit P-10), para. 8. [↑](#footnote-ref-12)
13. See copy of the final French version of this notice, Exhibit P-11. [↑](#footnote-ref-13)
14. See copy of the final French version of this notice, Exhibit P-12. [↑](#footnote-ref-14)
15. Exhibit P-13. [↑](#footnote-ref-15)
16. It should be noted that Belobaba J. requested further written submissions regarding class counsel’s motion for approval of fees and disbursements. In the Court’s view, this has no impact on the present application. [↑](#footnote-ref-16)
17. 2021 QCCS 2681, paras. 26 and 27. [↑](#footnote-ref-17)
18. National Settlement Agreement (Exhibit P-8), Schedules A, B and C. [↑](#footnote-ref-18)
19. Distribution Protocol (Exhibit P-8), Section 3 (10) (e). [↑](#footnote-ref-19)
20. Distribution Protocol (Exhibit P-8), Section 3 (10) (k). [↑](#footnote-ref-20)
21. The Court cites the French version of the transaction, Exhibit P-9. [↑](#footnote-ref-21)
22. Also in Exhibit P-9. [↑](#footnote-ref-22)
23. 2022 QCCS 4565. See the case law cited. [↑](#footnote-ref-23)
24. 2023 QCCS 910, paras. 13–15. [↑](#footnote-ref-24)